**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929**

**WP(C).No. 32889 of 2006(M)**
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**PETITIONER:**
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**LEELA, D/O.ADINAL,**
**CHRISTIAN LADY, AGED 48, RESIDING AT**
**ABISADANAM, KOLLIYOOR DESOM, THIRUVANANTHAPURAM.**

**BY ADV. SRI.R.S.KALKURA,**
**SRI.M.S.KALESH,**
**SRI.M.R.SARIN,**
**SRI.HARISH GOPINATH,**
**SRI.V.VINAY MENON.**

**RESPONDENTS/ADDITIONAL JUDGMENT DEBTORS 2 TO 5:**
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1. **RAJAMMA JOHN, J.R.NIVAS,**
   **THUMOLLIYODE, PANGODE, VENGANOOR P.O.,**
   **THIRUVANANTHAPURAM.**

2. **GLADSON JOHN, J.R.NIVAS,**
   **THUMOLLIYODE, PANGODE, VENGANOOR P.O.,**
   **THIRUVANANTHAPURAM.**

3. **KINISTAN JOHN, J.R.NIVAS,**
   **THUMOLLIYODE, PANGODE, VENGANOOR P.O.,**
   **THIRUVANANTHAPURAM.**

4. **JUSTIN JOHN, J.R.NIVAS,**
   **THUMOLLIYODE, PANGODE, VENGANOOR P.O.,**
   **THIRUVANANTHAPURAM.**

**BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR,**
**ADV. SRI.R.V.SREEJITH.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.32889/2006-M:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE DECREE IN O.S. NO. 829/2001 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, TRIVANDRUM.**

**EXT.P.2: COPY OF THE EXECUTION PETITION E.P. NO. 563/2004 IN O.S. NO. 829/2001.**

**EXT.P.3: COPY OF THE E.A. NO. 841/2005 IN E.P. NO. 563/2004 IN O.S. NO. 829/2001.**

**EXT.P.4: COPY OF THE OBJECTION SUBMITTED BY THE ORIGINAL JUDGMENT DEBTOR TO THE E.A. NO. 841/2005.**

**EXT.P.5: COPY OF THE APPLICATION FOR IMPLEADMENT OF THE LEGAL HEIRS OF THE JUDGMENT DEBTOR.**

**EXT.P.6: COPY OF THE DOCUMENT NO. 1022/75.**

**EXT.P.7: COPY OF THE ORDER DTD. 28/10/2006 IN E.P. NO. 563/2004 IN O.S. NO. 829/2001 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, TRIVANDRUM.**

**RESPONDENT'S EXHIBITS: NIL.**

**//TRUE COPY//**

**prv.**

**M.N. KRISHNAN, J.**

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**W.P.C. NO. 32889 OF 2006**

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**Dated this the 22nd day of November, 2007.**

**J U D G M E N T**

This writ petition is filed seeking to set aside the order of the Principal Munsiff, Thiruvananthapuram in E.P.563/04 in O.S.829/01. The judgment debtors 1 and 2 are husband and wife. Husband is no more. Additional judgment debtors 2 to 5 are his legal representatives of whom judgment debtor 2 is the widow. Now, the decree holder has moved this application for attachment of the right of first judgment debtor over 5 cents of land attached to the execution petition. The contention of judgment debtors 2 to 5 is to the effect that the property was given to the 2nd judgment debtor as her share over the property and the first judgment debtor has joined the document only as a name lender and therefore he had no right over the property and the question

of any share of him being attached on the basis of that document does not arise.

2. The learned counsel for the writ petitioner had produced a copy of the document before this Court. It is true that a nomenclature of a document cannot be taken as a conclusive material for deciding the nature of transaction. But it is equally well settled principle that while interpreting or construing a document it is the duty of the Court to gather the intention of the person who had executed the document from the materials available and if not available, from the surrounding circumstances. I feel this is a case where the intention is manifestly clear from the recitals of the document itself. The document is styled as a settlement. It is also recited that the settlement is executed for the share which the second judgment debtor is entitled to. But it is further made clear that the settlement gift is given in favour of both. Further there are recitals to the effect that both of them have to jointly possess, enjoy the property, change the

mutation and in case of alienation both of them have to join together and both of them together have to enjoy the property permanently as absolute owners of the property. Or in other words, .....

.....

.....

....." Therefore, one cannot hold that the husband is only a name lender to the document because all powers of an absolute owner is given to him along with the debtor. Therefore, the finding of the Court below that the first judgment debtor did not get any right under the disputed document cannot be upheld and therefore it is set aside.

3. It is made clear that the half right of deceased John would have devolved upon his legal representatives and it is that right of John which had devolved upon the legal representatives has to be proceeded in this execution petition for realisation of the amount by way of attachment. Therefore, the writ petition is disposed of as follows.

(1) The order under challenge is set aside.

(2) The decree holder is at liberty to proceed against the half right of the deceased John in the hands of his judgment debtors.

The writ petition is disposed of accordingly.

**M.N. KRISHNAN, JUDGE.**

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